

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-72
FM Table of Allotments,)	RM-10857
FM Broadcast Stations.)	
(Windsor and Bethel, North Carolina))	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 17, 2004

Released: March 19, 2004

Comments Date: May 10, 2004

Reply comments Date: May 25, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Eure Communications, Inc. and Lifeline Ministries, Inc. ("Eure"), licensee of Station WIAM, Windsor, North Carolina.¹ Eure requests the substitution of Channel 255C3 for Channel 255A at Windsor, reallocation of Channel 255C3 from Windsor to Bethel, North Carolina, and the modification of the authorization for Station WIAM to reflect the change. Eure stated its intention to file an application for Channel 255C3 at Bethel, North Carolina.

2. Eure filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.³

3. In support of the petition, Eure states that Channel 255C3 can be allotted to Bethel, North Carolina, in compliance with Section 73.207 of the Commission's Rules. Eure further states that the community of Bethel is located in Northern Pitt County, has been incorporated since 1873, and has a mayor and town council. Bethel has a population of 1,681 people according to the 2000 Census. Bethel has a police department, a volunteer fire department, a library, its own school system, post office, and zip code (27812). Bethel has civic clubs and organizations such as the Masons, Rotary, Boy Scouts and Cub Scouts. Bethel has numerous commercial businesses to serve its residents. Eure believes that Bethel

¹ Lifeline Ministries, Inc. is the licensee of Station WIAM, Windsor, North Carolina. On December 10, 2003, an application was filed seeking consent to assignment of license of Station WIAM from Lifeline Ministries, Inc. to Eure Communications, Inc. (BALH-20031210ACD). Lifeline Ministries, Inc. is joining in this petition.

² See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

possesses the requisite social, economic and cultural components that are commonly associated with community status. Eure states that its proposal will provide a first local service for Bethel while Windsor will not be deprived of its sole aural transmission service as Stations WURB and WBTE(AM) will continue to serve the community. According to Eure, Bethel is not located inside any urbanized areas and the principal community contour of a station operating on the proposed allotment at maximum facilities from the proposed reference coordinates would not encompass 50 percent of any urbanized area. Eure also states that the proposed reallocation of Channel 255C3 to Bethel will cover 4,798 square kilometers with 215,225 people which is approximately five times the population currently served by Station WIAM at Windsor. Further, Eure's technical comments indicate there is no loss area resulting from the proposed WIAM reallocation receiving fewer than five aural services.

4. We believe that the proposal warrants consideration since the reallocation would provide Bethel with its first local aural transmission service. An engineering analysis shows that Channel 255C3 can be allotted to Bethel in compliance with the Commission's spacing requirements at coordinates 35-48-25 and 77-22-44.⁴ Windsor will continue to receive local service from Stations WURB(FM) and WBTE(AM). Our analysis indicates that there will be a net gain of 2,286 square kilometers and 168,195 people. We also show that the proposed 70 dBu contour will cover 26 percent of the Greenville, North Carolina Urbanized Area while the existing 70 dBu contour does not cover any urbanized area. Accordingly, Eure is not required to make a showing pursuant to *Faye and Richard Tuck*.⁵ The reallocation of Channel 255C3 to Bethel falls under priority 3), first local service, while retention of Channel 255A at Windsor is considered under priority 4), other public service. As requested, we shall propose to modify the license for Station WIAM to specify operation on Channel 255C3 at Bethel, North Carolina, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest for the use of Channel 255C3 at Bethel.

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u> <u>Proposed</u>
Bethel, North Carolina	-----	255C3
Windsor, North Carolina	249A, 255A	249A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before May 10, 2004, and reply comments on or before May 25,

⁴ The site specified by Eure for Channel 255C3 at Bethel was short spaced to Channel 255C3, Station WSKS, South Hill, Virginia. The license for Station WSKS, South Hill, was modified in MB Docket 03-47 to specify operation on Channel 270A. See 18 FCC Rcd 12840 (MB 2003). Commission records reflect that on December 23, 2003, an application was granted to change the operating channel of Station WSKS from Channel 255C3 to Channel 270A (BPH-20030828APF).

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Eure's counsel, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, D. C. 20016

8. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁶

10. For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not

⁶ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.